

**Proposal of
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, establishing a framework for
setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC**

EUREFAS' feedback

EUREFAS - the European Refurbishment Association welcomes the proposal of Ecodesign for Sustainable Products, and its intentions therein.

This new proposal focused on the manufacturing phase of products, should complement other pieces of legislation that share the same objectives of reaching sustainable production and consumption, such as *Empowering customers towards green transition*¹ and the upcoming *Right to repair*².

With 78% of carbon footprint coming from manufacturing³, it is crucial that the EU legislative framework sets ambitious principles at the design and manufacturing stages in order to create more durable, reusable and repairable products, and encourages sustainable consumption patterns by making “sustainable products the norm”. Offering such products is however not the only solution to implement the green transition. To this day, the spread of second-hand and refurbished goods has shown potential to limit the need for the manufacturing of new products.

Second-hand goods' growing success has created a new market that has remained unaddressed before this proposal. EUREFAS welcomes the fact that new economic operators such as refurbishers are now acknowledged. However, EUREFAS would like to raise some concerns about how refurbishment is addressed in the regulation and how a digital product passport can benefit the sector.

Refurbishment definition and scope

EUREFAS welcomes the express reference to refurbishment in European legislation and that refurbishers are identified in the value-chain as specific actors in the second-hand sector, alongside other categories of professionals, including producers and remanufacturers.

However, the proposed definition does not, in our view, describe the reality of our activities and we are concerned that by implying that “refurbishing” means modifying a device, then the proposed wording would imply that refurbishers should meet the same obligations imposed on manufacturers.

As per Article 28 of the proposal, when “modifying” a product, the professional can be considered a manufacturer, along with refurbishment being considered an activity that can “affect compliance”. Therefore the definition must be clear beforehand, as professional as result of the current proposed definition, means that refurbishers will have to meet the obligations as set out in Article 21, which they are not able to do, as they are not implied at the manufacturing stage of a product and thus do not have access to the required documentation.

¹ Directive amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information (COM/2022/143)

² “Sustainable Consumptions of goods : Promoting repair and reuse” Initiative

³ Assessment of the environmental impact of digital technology in France and prospective analysis ; Ademe & Arcep (january 2022)

To that end, we would like to propose the following amendment to the definition, in order to address gaps and misconceptions : *“Refurbishment means the testing and, if needed, the maintenance or repair of a second hand good or waste by a professional, before making it available on the market. Refurbishment may also include improving the aesthetics of the good.”*

Refurbishment is a standalone process, different from manufacturing and remanufacturing, as rightly parted in article 2, and is limited to the testing of functionalities to ensure the device is fully functional. Repairs are not automatic - contrary to remanufacturing - and the product is serviced only if necessary. To that end, repair and maintenance activities can occur as defined in article 2 (19) and article 2 (20), finding that refurbishment never modifies a good or affects its functionalities, or purpose, as originally intended.

The aesthetic appearance of a second-hand good can also be improved to a certain extent (through cleaning for example), but the intention is never to bring it back to mint condition. With this in mind, we would like to also propose an amendment to the definition of “upgrading” in Article 2 (17) which should only be limited to *“enhancing the functionality, performance, capacity”* of a product.

We are also concerned about the definition of “unsold consumer product” as per Article 2 (37) of the proposal. In fact, some products that are not sold, but displayed in stores or returned in view of the right of withdrawal, might be brought back in a condition that needs testing, slight repair or maintenance, and that are for this very reason, often discarded. In order to maximise the amount of reused products, we would like those goods to be allowed to be sold as refurbished.

This proposal should then ensure a clear and realistic definition of refurbishment with a consistent legal framework attached for the sector, in order to expand and thus help meeting the objectives of the Circular Economy Action Plan, especially in the view of all legal consequences that might occur through delegated acts on many products.

Applicable legal framework : A needed derogatory regime for refurbishers

In addition to the risk of being considered a manufacturer within the parameters of the proposed definition, we do not think the proposed regulation considers the specific status of refurbishers as importers or distributors. To this day, as the refurbishment market is growing, refurbishers might have to source products outside the EU market and so be qualified also as importers, especially since local collecting schemes are not yet sufficiently developed. When refurbishers are not importing a product, they can - as economic operators along the value chain making a product available on the market - be also be qualified as distributors.

It may be the case that some refurbishers fall into several categories, or just one. The reality is, because refurbishers intervene at the middle of the value-chain, they are not able to meet all legal requirements as set out in Articles 4, 21, 23 and 24, as refurbishers do not have access to all the documentation related to the design and manufacturing stage of a product, such as its conformity documentation, technical documentation, initial packaging and any document referring to its performance. As second-hand professionals, refurbishers also encounter a lack of information due to each individual previous owner's use, since every product comes in a unique condition.

This lack of information prevents refurbishers to meet legal obligations such as providing technical documentation required by a delegated act (Article 4), bringing into conformity and compliance a good (Article 23), or even handling a product with due care to satisfy ecodesign requirements without having access to them as distributors (Article 24).

To this day, refurbishers cannot meet all the obligations applicable to manufacturers, importers and distributors. The proposed regulation should thus endorse a refurbishers' specific situation and exempt them from all those requirements.

Digital product passport

Traceability is a core challenge for second-hand professionals due to a users' ownership, in addition to the lack of access to manufacturing stage documentation that deprives them of easily knowing in which condition the product comes, and how to properly service it before selling it back.

Therefore, a digital product passport available throughout the value chain holds many benefits for the refurbishment activity, which can then improve the amount of quality and transparency of reused products, via the enabling of an electronic repository of information, such as - non exhaustively - conformity and technical documentation, instructions to safely handle and repair the product, as well as information on pre-ownership and tax payments. With a shared access to these types of information, all economic operators along the value chain would be able to handle the product and satisfy all compliance requirements.

Therein, in order to fulfil the full potential of an effective digital product passport, refurbishers should be expressly included in the current provisions, alongside remanufacturers, recyclers and repairers, as stakeholders for whom the document is intended.
